

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

07/12/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-003277

FILED: _____

ROBERT BISBY

ROBERT BISBY
6037 W BANFF LN
GLENDALE AZ 85306-0000

v.

CLARENCE FORBEY, et al.

SCOTT A MCKAY

DISPOSITION CLERK-CSC
GLENDALE CITY COURT
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since May 17, 2002. This Court has considered and reviewed the Memorandum submitted by Appellant. Appellees have chosen not to file a memorandum. Appellant has filed a Motion for Dismissal of the Injunction, and good cause not appearing in the request,

IT IS ORDERED denying the same.

After reviewing the record in this case, this Court believes it is important to write an opinion and not simply grant a default judgment because Appellee has chosen not to file a memorandum.

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Counsel for Appellant has also requested oral argument in this case. Having reviewed the record, the Court does not feel that oral argument would be remotely helpful.

IT IS ORDERED denying Appellant's request for Oral Argument.

Most of the issues raised by Appellant concern the sufficiency of the evidence to warrant the trial court's issuance of an Injunction Against Harassment pursuant to A.R.S. Section 12-1809 et seq. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.¹ All evidence will be viewed in a light most favorable to sustaining a judgment and all reasonable inferences will be resolved against the Appellant.² If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the judgment and against the Appellant.³ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁴ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁵ The Arizona Supreme Court has explained in State v. Tison⁶ that "substantial evidence" means:

¹ State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

² State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

³ State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁴ In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

⁵ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁶ SUPRA.

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More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁷

Though just briefly mentioned by Appellants, it is clear from the record of the proceedings before the Glendale City Court that Appellants were denied their opportunity to present testimony and witnesses on their own behalf. A careful examination of the record before the trial court reflects that the trial judge conducted a direct and cross-examination of each of the parties and then failed to allow Appellants the opportunity to present their own direct testimony or the testimony of the two witnesses that they had brought to court with them.

Parties appearing in all of Arizona courts, including in hearings on Injunctions Against Harassment, have the right to due process. Article II, Section 4 of the Arizona Constitution provides for the identical due process rights embodied in the 14th Amendment to the United States Constitution. Our fundamental rights of due process include the right to a fair trial, the right to present witnesses' testimony and exhibits in support of one's case. Most certainly, a trial judge has a right, and a duty, to control the presentation of evidence, including the obligation to place reasonable time limits upon the presentation of such evidence. This Court notes that in the present case, the trial judge failed to set time limits at the commencement of the hearing. The trial judge did not inform both parties of an equal time limit that each would have to present their cases. Instead, after questioning each of the

⁷ Id. At 553, 633 P.2d at 362.

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parties herself, the trial judge issued her ruling without giving Appellants the opportunity to call and examine the witnesses they had already informed the trial judge were present to testify on their behalf. This Court finds that Appellants were denied their due process rights to call witnesses on their own behalf and to present testimony and evidence in support of their position.

This Court has previously reviewed the testimony and evidence before the court and found substantial evidence exists to support the ruling of the trial judge. However, when a party has been denied an essential component of due process, such a denial constitutes fundamental error.⁸

IT IS THEREFORE ORDERED reversing the order of the Glendale City Court which continued the Injunctions Against Harassment in full force and effect.

IT IS FURTHER ORDERED that the *ex parte* Injunctions Against Harassment which were initially issued by the Glendale City Court on January 23, 2002 shall remain in full force and effect until such time as the Glendale City Court can schedule and hear an evidentiary hearing on whether to continue those *ex parte* Injunctions Against Harassment.

IT IS FURTHER ORDERED remanding this case back to the Glendale City Court for a new evidentiary hearing, as originally requested by Appellants consistent with this opinion.

⁸ See State v. Flowers, 159 Ariz. 469, 768 P.2d 201 (App. 1989).
Docket Code 019